IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

Crl.Rev.Pet.No. 2247 of 2007

AGAINST THE ORDER IN CRMP. 5900/2006 IN
CC.81/2000 of CHIEF JUDICIAL MAGISTRATE COURT, KOLLAM

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REVN. PETITIONER: PETITIONER/ACCUSED NO.3

SANTHOSH, S/O.HARIDAS, KILATHENGIL
VEEDU, PUTHEN NADA, THEKKEVILA,
KOLLAM.

BY ADV. SRI.V.V.RAJA
SRI.M.T.SURESHKUMAR

RESPONDENTS: COMPLAINANT AND STATE

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1. G.ROBERT, S/O.GEORGE, SREE SAILAM,
PATTATHANAM WEST, VADAKKEVILA VILLAGE,
SINO TAILORS, KOLLAM BEACH ROAD, KOLLAM.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.C.RAJENDRAN
PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 09/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl.R.P. No. 2247 OF 2007 A

Dated this the 9th day of July, 2007

O R D E R

The 3rd accused in CC.No.81/2000 on the file of Chief Judicial Magistrate, Kollam, for offences punishable under sections 419, 420 and 468 IPC challenges the order dated 27.2.07 in Cr.M.P.No.5900/06 as per which the trial court ordered further investigation of C.C. No.81/2000 filed under section 173(8) Cr.P.C. at the instance of the de facto complainant(1st respondent herein), who was examined as PW1 in the case.

2. The case arose out of Crime No.37/2000 of Kollam East Police Station. The case of the prosecution is that the 1st respondent is the owner of the property in question and the 3rd accused, fraudulently styling himself as the 1st accused, executed an agreement for sale in the presence of the 1st accused and obtained a sum of Rs.2,00,000/- as advance. The 2nd accused is alleged to be the person who introduced the 3rd accused to the de facto complainant as the 1st accused.

3. The case originated in the form of a private complaint filed on 11.1.2000. It was forwarded to the police under section 156(3) Cr.P.C. resulting in the Kollam East Police registering a Crime No.37/2000 for the aforementioned offences. After conclusion of the investigation, the final report under section 173(2) Cr.P.C. was filed

some time in the year 2000 itself. The Chief Judicial Magistrate took cognizance of the offences and registered the case as C.C.No.81/2000. During the course of trial, the 1st respondent complainant was examined as PW1 on 3.5.2004. He subsequently filed W.P.(C) No.17746/2006 before this court complaining that the trial of the case was not proceeding progressively due to various reasons and praying for an expeditious disposal of C.C.No.81/2000. As per judgment dated 7.7.2006, this court at the stage of admission itself directed the disposal of C.C.No.81/2000 within six months from the date of receipt of a copy of the judgment.

4. Alleging that the investigation of the case was not properly conducted and that several items of evidence, which ought to have been seized by the Investigating Officer during the stage of investigation, were not seized and produced before court and that on account of the time constraint fixed by this court in W.P.(C) No.17746/06 he was not able to file an appropriate petition for further investigation under section 173(8) Cr.P.C., the de facto complainant filed W.P.(C) No.28559/06 before this court. When it was submitted before this court that the de facto complainant wants to file an application for further investigation, it was observed that it was the Prosecutor who should make such an application, presumably because it was a police charged case in which the prosecution has been conducted by the Public Prosecutor in charge

of the case. However, the Writ Petition was disposed of holding that if an application for further investigation was filed before the Magistrate and the Magistrate was of the view that to serve the interests of justice further investigation ought to be ordered, the time constraint fixed by this court in the earlier Writ Petition could be got over by moving this court for extension of time. Thereafter, the de facto complainant appears to have filed Cr.M.P.No.5900/06 before the Chief Judicial Magistrate under section 173(8) Cr.P.C. He had made a mention of various documents which according to him were not seized and produced before the court by the Investigating Officer. Eventhough the petition was opposed by the accused persons contenting, inter alia, that such an application could not be filed at a belated stage with a view to plug the loop holes in the prosecution, the same was allowed by the impugned order. It is the said order which is assailed in this revision.

5. I heard the learned counsel appearing on both sides who made submissions in support of their respective stand.

6. The learned counsel appearing for the revision petitioner placed reliance upon the decision reported in ***Shaji Vs. State of Kerala*** [2003 (2) KLT 929] to contend that further investigation can be ordered only at a sufficiently early stage and in the case on hand the petition under section 173(8) Cr.P.C. was filed only on 5.12.2006. He also submitted that such an application could not have been filed by the de

facto complainant but by the Public Prosecutor since it is the Public Prosecutor who is in-charge of the case.

7. The learned counsel for the 1st respondent complainant, however, submitted that delay by itself cannot stand in the way of a petition under section 173(8) Cr.P.C. being allowed since the court exists for finding out the truth. He buttressed his contention by relying on the decision reported in ***Hasan Bhai Vali Bhai Qureshi Vs. State of Gujarat and others***[AIR 2004 SC 2078] and ***Joisy Vs. Sub Inspector of Police*** [2002 (3) KLT 172].

8. After hearing both sides, I am of the view that the court below has not addressed itself to the various aspects of the matter before passing the impugned order. As this is a case which originated on a police charge, ordinarily it is for the Public Prosecutor in charge of the prosecution who conducted the prosecution. No doubt, if the conduct of the prosecution by the Prosecutor in charge of the case is not impartial or is bereft of the commitment expected of such an officer, the aggrieved person can certainly seek the permission of the court to conduct the prosecution under the directions of the Prosecutor. The aggrieved person can also in such a case, move the court seeking further investigation under section 173(8) Cr.P.C. It is now well settled that further investigation can be ordered even at the post-cognizance stage. Similarly, the matter is not res integra that it is for the police to

conduct the further investigation and they may have to seek formal permission from the court obviously to inform the court about the further investigation so that the court may use its discretion and decide to proceed with or not to proceed with the trial of the case. In the case on hand, it was not the Public Prosecutor who filed the application for further investigation. It was PW1 who moved the court by the aforesaid petition. He was examined before the court during the trial on 3.5.2004. It is not discernible as to whether at that stage he had discovered the lapses, if any, on the part of the investigating agency. He had approached this court twice. During his first venture to this court his grievance was that the trial was not progressing and he wanted an early disposal of the case before the trial court and obtained a direction to that effect. The Writ Petition was filed through a counsel which means that he had sufficient legal advice. At that stage of the proceedings, he had no objection that the investigation was not proper. No doubt, in the second Writ Petition filed by him he did voice such a grievance and this court finally observed that the time limit fixed by this court in the earlier Writ Petition need not stand in the way if the trial court was satisfied that the interests of justice warranted further investigation.

9. A reading of the impugned order does not reveal the reasons which persuaded the court to direct further investigation. It also does not show as to why the Prosecutor did not file an application and

whether there was any distrust voiced by the de facto complainant in the conduct of the prosecution by the Public Prosecutor. Eventhough delay need not stand in the way of further investigation, a question may arise as to why a person who was closely following the trial and who had approached this court for expediting the trial, was not vigilant enough to seek further investigation. The learned Magistrate has not also considered the various items of evidence which according to the de facto complainant were omitted to be collected by the investigating agency during investigation. The impact of those documents as well as the reasons, if any, which prevented the investigating agency from collecting those materials are some of the questions which should have been addressed before considering the application for further investigation, especially in a case where the trial had started without any demur and even a direction was sought from this court for an early disposal of the case. Under these circumstances, the impugned order is set aside and the learned Chief Judicial Magistrate is directed to dispose of Cr.M.P.No.5900/06 afresh after considering all the relevant aspects of the matter and by passing a speaking order.

This revision is disposed of as above.

(V. RAMKUMAR, JUDGE)

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